IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3799 OF 2007
IN
SUIT NO. 2799 OF 2007

M/s. O.F.S.S. Industries Pvt.Ltd. & Anr. .. Plaintiffs.

V/s.

M/s. Dena Bank and Ors. .. Defendants.

Mr. Raja S. Ghadge for the Plaintiffs.
Mr. Sachin Kaikini i/b. K.N. Bhandary for Defendants 1 and 2.
Mr. Cyrus Ardeshir i/b. ALMT Legal for Defendants 3 and 4.

CORAM : DR. D.Y. CHANDRACHUD,J.

06TH DECEMBER 2007.

P.C. :-

. With the consent of Counsel appearing on behalf of the Plaintiffs and the respective Defendants, the Notice of Motion has been taken up for hearing and final disposal.

2. The Notice of Motion has been taken out by the Plaintiffs seeking relief to the effect that the First Defendant, Dena Bank, be directed to close a Current

Account (bearing No.CA/GEN/77006) as well as Fixed Deposit Account and pay the proceeds thereof viz. an amount of Rs.20,43,662/- to the First Plaintiff. The second relief that has been sought is a direction to the Bank to deposit the title deeds of three properties with the Second Plaintiff.

3. The First Plaintiff is a Private Limited Company. The Second Plaintiff and the Third and Fourth Defendants are brothers. The Second Plaintiff and the Third and Fourth Defendants together with their mother and sisters are or were at the material time Directors in the First Plaintiff. The Second Plaintiff instituted Proceedings before the Company Law Board to seek relief against oppression and mismanagement in a Petition filed under Sections 397 and 398 of the Company Act, 1956. This Court has been informed that arguments have substantially been urged and the matter is being finally argued before the CLB. During the pendency of the proceedings before the CLB, the Third and Fourth Defendants are stated to have moved an application for interim relief seeking interalia a direction restraining the Second Plaintiff from disposing of the assets and properties of the Company

and seeking a direction to all the Banks where the Company has Accounts to permit joint operation by the Second and the Third Defendants. The CLB, it would appear from the record of this proceeding, has passed two interim orders on 1st March 2007 and 15th March 2007 respectively. By the first of the interim orders, the CLB has recorded the statement of the Advocate appearing on behalf of the Second Plaintiff that status-quo in regard to the properties of the Company shall be maintained. By the second order the CLB directed that status-quo should be maintained in respect of the management of a Petrol pump belonging to the Company. The proceedings are now posted before the CLB in January 2008.

4. The contention of the Third and Fourth Defendants is that the suit came to be instituted before this Court on 12th September 2007 after the CLB had passed interim orders in March 2007 and relief sought in the Motion at this stage is with a view to overcome the orders of the CLB in the pending proceedings. There is merit in the submission which has been urged on behalf of the Third and Fourth Defendants that the directions which have been sought in the Notice of Motion ought to

have been and should be sought before the CLB. Parties are litigating before the CLB in proceedings under Sections 397 and 398 of the Company Act, 1956 and it is undisputed that the interim orders passed by the CLB would govern all the properties and assets of the First Plaintiff - Company. It is also undisputed before this Court that one of the properties in respect of which relief has been sought in the Notice of Motion viz. Unit No.125 of Damji Shamji Udyog Bhavan at Andheri (West), Mumbai - 53 belongs to the Third Defendant. The Bank has in its affidavit in reply stated that the title deeds of the aforesaid unit have been released to the Third Defendant since the property belongs to him. Counsel appearing on behalf of the Plaintiff does not dispute this position. Parties are involved in a serious dispute over the management of the Company. The First Plaintiff is closely held and the members of a family have been directors. The reliefs sought here would have an immediate bearing on the proceedings before the CLB and the orders that may be envisaged in those proceedings to subserve the ends of justice.

5. The Bank has stated before the Court that it does not claim a lien on any of the title deeds of the remaining two properties and would abide by the orders passed by the Company Law Board in regard to the disbursement of the amount which has been invested with the Bank. It has been stated that the fixed deposit has been renewed periodically by the Bank and the First Plaintiff would be entitle to accrued interest thereon.

6. In my view, it would be only appropriate that any reliefs that parties seek with respect to the title deeds to the properties and the Bank Accounts must be urged before the CLB. As already noted above, the interim order passed by the CLB covers the properties of the Company. All the Directors of the Company who have been impleaded as parties to the proceedings before the CLB are not before this Court in the suit. The reliefs that have been claimed in the Notice of Motion, it is common ground, are the same as those that have been claimed in the suit. Granting relief in the Notice of Motion would therefore amount to a decree being passed in the suit.

7. In these circumstances, this Motion is disposed of, leaving it open to the Plaintiffs to seek appropriate directions before the CLB.